

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY CURTIS PALMER,

Plaintiff,

v.

M. MELENDREZ,

Defendant.

Case No.: 1:22-cv-00800-CDB

**FINDINGS AND RECOMMENDATIONS
TO DISMISS CERTAIN CLAIMS IN THE
FIRST AMENDED COMPLAINT**

14-DAY OBJECTION PERIOD

Clerk of the Court to Assign District Judge

Plaintiff Johnny Curtis Palmer is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. INTRODUCTION

On February 1, 2024, the Court issued its Second Screening Order. (Doc. 12.) The Court found Plaintiff's first amended complaint plausibly alleges a First Amendment violation of his right to send and receive mail (Claim Two) against Defendant Melendrez but failed to allege any other cognizable claim against any other defendant. (*Id.* at 3-6.) Plaintiff was ordered to select one of the following three options within 21 days of the date of service of the order: (1) to notify the Court in writing that he did not wish to file a second amended complaint and was willing to proceed *only* on the First Amendment claim (Claim Two) against Defendant Melendrez, with the remaining claims to be dismissed; or (2) to file a second amended complaint curing the deficiencies identified by the Court in the screening order; or (3) to file a notice of voluntary

dismissal. (*Id.* at 7-8.)

On February 15, 2024, Plaintiff filed a notice indicating he was willing to proceed only on the claim found cognizable by the Court. (Doc. 13.)

II. CONCLUSION AND RECOMMENDATIONS

For the reasons set forth in the Court's Second Screening Order, the Court
RECOMMENDS that:

1. This action **PROCEED** *only* on Plaintiff's First Amendment claim concerning the right to send and receive mail (Claim Two), pursuant to 42 U.S.C. § 1983; and
2. Any remaining claims in Plaintiff's first amended complaint be **DISMISSED**.

These Findings and Recommendations will be submitted to the district judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these Findings and Recommendations, a party may file written objections with the Court. The document should be captioned, "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may result in waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **February 16, 2024**


UNITED STATES MAGISTRATE JUDGE